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SYNOPSIS:

This bill would provide further for the appointment and service of notaries public and the fee collected by the judge of probate for a commission.

This bill would expand the grounds under which a judge of probate may accept or deny an application for a notary commission and would require an applicant, before being commissioned, to complete a training program.

This bill would increase the amount of the bond required of a notary public.

This bill would provide further for the acknowledgment of signatures and the fee collected for notarial acts performed.

This bill also specifies what acts committed by a notary or other individual constitute a crime.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for



29 the purpose.

30 The purpose or effect of this bill would be to  
31 require a new or increased expenditure of local funds  
32 within the meaning of the amendment. However, the bill  
33 does not require approval of a local governmental  
34 entity or enactment by a 2/3 vote to become effective  
35 because it comes within one of the specified exceptions  
36 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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43 Relating to the employment of notaries public; to amend  
44 Sections 36-20-70, 36-20-71, 36-20-72, 36-20-73.1, 36-20-74,  
45 and 36-20-75, Code of Alabama 1975; to provide further for the  
46 appointment and service of notaries public; to increase the  
47 fee collected by the judge of probate for the commission of a  
48 notary; to expand the grounds under which a judge of probate  
49 may accept or deny an application for a notary commission; to  
50 require an applicant for a notary commission to complete a  
51 training program; to increase the bond required of a notary  
52 public; to provide further for the acknowledgment of  
53 signatures; to increase the fee collected for notarial acts  
54 performed; to specify the acts of a notary or other individual  
55 that constitute a crime; and in connection therewith would  
56 have as its purpose or effect the requirement of a new or



57 increased expenditure of local funds within the meaning of  
58 Section 111.05 of the Constitution of Alabama of 2022.

59 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

60 Section 1. Sections 36-20-70, 36-20-71, 36-20-72,  
61 36-20-73.1, 36-20-74, and 36-20-75 of the Code of Alabama  
62 1975, are amended to read as follows:

63 "§36-20-70

64 (a) A competent number of notaries public for the state  
65 at large shall be appointed and commissioned by the judges of  
66 probate of the several counties of the state and shall hold  
67 office for four years from the date of their commission.  
68 Notaries public shall perform all the acts and exercise all  
69 authority under the general laws of the State of Alabama and  
70 shall be appointed and serve at the discretion of the judge of  
71 probate issuing their commission or the judge's successor in  
72 office. The jurisdiction of the notaries public shall not be  
73 limited to the counties of their residence and shall extend to  
74 any county of the state. The judges of probate shall collect a  
75 fee of ~~ten dollars (\$10)~~ one hundred dollars (\$100) for each  
76 notary commission issued. The judges of probate shall also  
77 report to the Secretary of State the name, county of  
78 residence, date of issuance, and date of expiration of the  
79 commission of each notary public appointed and commissioned  
80 under this subsection.

81 (b) All existing notaries public functioning on January  
82 1, ~~2012~~ 2023, shall continue to function pursuant to their  
83 existing authority for the remainder of their existing  
84 commission.



85           (c) A judge of probate may accept or deny any  
86 application for notary public commission and shall deny an  
87 application for notary public commission on any of the  
88 following grounds:

89           (1) The applicant is not a resident of this state.

90           (2) The applicant makes the application to a judge who  
91 is not the judge of probate of the county of the applicant's  
92 residence.

93           (3) The applicant has been convicted of a felony or  
94 crime of moral turpitude.

95           (4) The applicant is currently a party to a bankruptcy  
96 proceeding.

97           (5) The applicant is under a current order adjudicating  
98 him or her incapacitated.

99           (6) The applicant provides false information on the  
100 application.

101           (7) The applicant is unable or unwilling to  
102 successfully complete the training program required in  
103 subsection (e).

104           (d) A notary public is not an insurer but is under a  
105 duty to act honestly, skillfully, and with reasonable  
106 diligence. A notary public shall not perform an acknowledgment  
107 in any transaction where he or she has a pecuniary interest or  
108 where any signatory being acknowledged by the notary is  
109 related by blood or marriage within the fourth degree of  
110 kinship.

111           (e) Before being commissioned, an applicant for a  
112 notary public commission shall successfully complete a



113 training program prepared by the Alabama Probate Judges  
114 Association and the Alabama Law Institute that tests his or  
115 her knowledge of all matters relevant to the appointment,  
116 authority, duties, and legal and ethical responsibilities of a  
117 notary public. An attorney who is commissioned as a notary  
118 public under this article is not required to complete the  
119 training requirement. A notary public who is commissioned as  
120 of the effective date of this act shall be required to  
121 complete the training requirement upon submitting an  
122 application for the renewal of his or her expired commission."

123 "§36-20-71

124 (a) Notaries public shall give bond with sureties,  
125 obtained from an Alabama licensed producer of such bonds, to  
126 be approved by the judge of probate of the county of their  
127 residence, in the sum of ~~twenty-five thousand dollars~~  
128 ~~(\$25,000)~~ fifty thousand dollars (\$50,000), payable to the  
129 State of Alabama, and conditioned to faithfully discharge the  
130 duties of ~~such~~ the office so long as they may continue therein  
131 or discharge any of the duties thereof. ~~Such~~ The bond shall be  
132 executed, approved, filed, and recorded in the office of the  
133 judge of probate of the county of their residence, before they  
134 enter on the duties of ~~such~~ the office.

135 (b) All existing notaries public functioning on January  
136 1, ~~2012~~ 2023, shall continue to function pursuant to their  
137 existing bond for the remainder of their existing commission."

138 "§36-20-72

139 (a) For the authentication of his or her official acts,  
140 each notary shall provide a seal of office, which shall



141 present, by its impression or stamp, the name, office, and the  
142 state for which he or she was appointed.

143 (b) The form and content of any notarial act shall  
144 include an oath, acknowledgment, and signature of each party  
145 to the document, or his or her mark, and the signature of the  
146 notary public and their seal of office by either ink stamp or  
147 embossed impression."

148 "§36-20-73.1

149 (a) Except as otherwise provided in this section, any  
150 signature acknowledged by a notary public shall be executed  
151 within this state and shall be executed in the physical  
152 presence of the notary public at the time of the  
153 acknowledgment, only after the notary public has positively  
154 identified the prospective signatory via personal knowledge of  
155 the affiant or the examination of photo identification issued  
156 by a governmental entity or agency.

157 (b) For the purposes of this section, the following  
158 terms shall have the following meanings:

159 (1) ORIGINAL SIGNATURE. A signature signed directly  
160 onto a document in wet ink by an individual who is named on  
161 the document.

162 (2) SIGNATORY. The individual who is named on the  
163 document and is to sign the document.

164 ~~(b)~~ (c) Unless otherwise provided by law, the powers and  
165 functions of a notary public require his or her original  
166 signature.

167 ~~(e)~~ (d) For purposes of this article, and subject to  
168 subsections ~~(d) to (f)~~ (e) to (g), inclusive, an individual



169 may personally appear before an acknowledging notary by either  
170 of the following:

171 (1) Physically appearing before the notary as provided  
172 in subsection (a).

173 (2) Appearing through the use of two-way audio-video  
174 communication technology that allows a notary public and a  
175 remotely located signatory to communicate with each other  
176 simultaneously by sight and sound, provided that the notary  
177 public is physically located in this state and the two-way  
178 audio-video communication is recorded and maintained for a  
179 period of seven years by the notary public.

180 ~~(d)~~ (e) If appearing through the use of two-way  
181 audio-video communication, the identity of the signatory shall  
182 be verified by the notary public using either of the following  
183 methods:

184 (1) The personal knowledge of the notary public of the  
185 identity of the signatory.

186 (2)a. The presentation of two valid forms of government  
187 issued identification, one of which shall include the face and  
188 signature of the signatory; and

189 b. A process by which the notary public verifies the  
190 identity of the signatory through a review of public or  
191 private data sources.

192 ~~(e)~~ (f) The two-way audio-video communication recording  
193 shall contain all of the following:

194 (1) The date and time of the remote notarial act.

195 (2) A description of the documents to which the remote  
196 notarial act relates.



197 (3) An attestation by the notary public of being  
198 physically located in this state.

199 (4) A description of how the identification of the  
200 signatory was verified.

201 (5) A clear image of any government issued  
202 identification, if applicable.

203 (6) A clear image of the act of signing observed by the  
204 notary public.

205 ~~(f)~~ (g) The official date and time of the notarization  
206 is the date and time the notary public witnessed the  
207 signature, including the date and time the signature was  
208 witnessed via two-way audio-video communication technology.  
209 All documents used during the two-way audio-video  
210 communication, shall be provided to the notary for his or her  
211 authentication and original signature.

212 ~~(g)~~ (h) Any action taken before July 1, 2021, allowing  
213 for the remote notarization of signatures under the Emergency  
214 Management Act of 1955, Article 1 of Chapter 9 of Title 31, is  
215 ratified and confirmed.

216 ~~(h)~~ (i) Remote notarization may not be used to notarize  
217 an absentee ballot application or an absentee ballot  
218 affidavit, or for any purpose related to voting.

219 ~~(i) A notary who intentionally or fraudulently violates~~  
220 ~~this section shall be guilty of a Class C misdemeanor."~~

221 "§36-20-74

222 ~~Notaries public are entitled to the sum of five dollar~~  
223 ~~(\$5) for carrying out any of the enumerated powers in Section~~  
224 ~~36-20-73.~~ A notary public commissioned pursuant to this article





225 is permitted a reasonable fee, not to exceed ten dollars  
226 (\$10), for each notarial act performed. No fee may be charged  
227 by a state, county, or municipal employee for a notarial act  
228 performed during, and as a part of, his or her public service,  
229 unless otherwise provided by law."

230 "§36-20-75

231 ~~Any person who, having been a notary, willfully~~  
232 ~~performs or assumes the authority to perform a notarial act~~  
233 ~~after his or her commission expires, with knowledge that his~~  
234 ~~or her commission has expired, or any person who without a~~  
235 ~~notary's commission assumes the authority and performs a~~  
236 ~~notarial act shall be guilty of a Class C misdemeanor.~~

237 (a) The commissioning judge of probate, or his or her  
238 successor in office, may issue a warning to a notary or  
239 restrict, suspend, or revoke a notarial commission for a  
240 violation of this article and on any ground for which an  
241 application for a commission may be denied under this article.  
242 A period of restriction, suspension, or revocation does not  
243 extend the expiration date of a commission.

244 (b) Except as otherwise permitted by law, an individual  
245 who commits any of the following acts is guilty of a Class C  
246 misdemeanor:

247 (1) Holding one's self out to the public as a notary  
248 without being commissioned.

249 (2) Performing a notarial act with an expired,  
250 suspended, or restricted commission.

251 (3) Performing a notarial act before taking an oath of  
252 office.



253 (4) Charging a fee for a notarial act in excess of the  
254 maximum fee allowed by this article.

255 (5) Taking an acknowledgment or administering an oath  
256 or affirmation without the principal appearing in person  
257 before the notary or following the procedures for remote  
258 notarization set out in this article.

259 (6) Taking an acknowledgment or administering an oath  
260 or affirmation without personal knowledge or satisfactory  
261 evidence of the identity of the principal.

262 (7) Taking a verification or proof without personal  
263 knowledge or satisfactory evidence of the identity of the  
264 subscribing witness.

265 (c) A notary is guilty of a Class D felony if he or she  
266 does any of the following with the intent to commit fraud or  
267 to intentionally assist in the commission of a fraudulent act:

268 (1) Takes an acknowledgment, or a verification or  
269 proof, or administers an oath or affirmation he or she knows  
270 or reasonably believes to be false.

271 (2) Takes an acknowledgment or administers an oath or  
272 affirmation without the principal appearing in person before  
273 the notary, or without following the procedures for remote  
274 notarization set out in this article.

275 (3) Takes a verification or proof without the  
276 subscribing witness appearing in person before the notary, or  
277 without following the procedures for remote notarization set  
278 out in this article.

279 (4) Performs notarial acts in this state with the  
280 knowledge that he or she is not properly commissioned under



281 this chapter.

282 (d) For purposes of enforcing this chapter, all of the  
283 following are applicable:

284 (1) Any party to a transaction requiring a notarial  
285 certificate for verification and any attorney licensed in this  
286 state who is involved in such a transaction in any capacity,  
287 may execute an affidavit and file it with either the Secretary  
288 of State or the judge of probate who issued the commission to  
289 the notary public, setting forth the actions which the affiant  
290 alleges are violations. Upon receipt of an affidavit, the  
291 Secretary of State or judge of probate shall forward the  
292 affidavit to the Alabama State Law Enforcement Agency. Upon  
293 receipt of the affidavit, the Alabama State Law Enforcement  
294 Agency shall initiate and carry out, on their own or in  
295 coordination with local law enforcement agencies,  
296 investigations of violations. Founded investigations shall be  
297 referred to the appropriate district attorney for prosecution.

298 (2) Resignation or expiration of a notarial commission  
299 does not terminate or preclude an investigation into the  
300 conduct of a notary by the Secretary of State, a judge of  
301 probate, or a law enforcement agency who may pursue the  
302 investigation to a conclusion, whereupon it may be a matter of  
303 public record whether or not the finding would have been  
304 grounds for disciplinary action.

305 (3) The commissioning judge of probate may order  
306 injunctive relief against any individual who violates this  
307 chapter including, but not limited to, ordering the surrender  
308 and destruction of a notary commission and a notary seal.



309           (e) Any individual who knowingly solicits, coerces, or  
310 in any material way influences a notary to commit official  
311 misconduct is guilty as an aider and abettor and is subject to  
312 the same level of punishment as the notary."

313           Section 2. Although this bill would have as its purpose  
314 or effect the requirement of a new or increased expenditure of  
315 local funds, the bill is excluded from further requirements  
316 and application under Section 111.05 of the Constitution of  
317 Alabama of 2022, because the bill defines a new crime or  
318 amends the definition of an existing crime.

319           Section 3. This act shall become effective on the first  
320 day of the third month following its passage and approval by  
321 the Governor, or its otherwise becoming law.